

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

VIRGIL L. HOCKADAY, #283542,

Petitioner,

v.

ACTION NO. 2:06CV17

GENE M. JOHNSON,  
Director of the Virginia  
Department of Corrections,

Respondent.

**FINAL ORDER**

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violation of federal rights pertaining to petitioner's convictions on February 8, 2000, in the Henrico County Circuit Court for murder, breaking and entering, use of a firearm in the commission of a felony, and possession of a firearm by a convicted felon, as a result of which he was sentenced to serve a total of sixty-five years in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. Report of the Magistrate Judge was filed on July 11, 2006, recommending dismissal of the petition. By copy of the report, each party was advised of his right to file written objections to the findings and recommendations made by the Magistrate Judge. On July 20, 2006, the Court received petitioner's objections to the Report and Recommendation.

The Court, having reviewed the record and examined the objections filed by the petitioner

to the United States Magistrate Judge's Report, and having made de novo findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed July 11, 2006. The Court notes that the petitioner's reference to Irons v. Carey, 408 F.3d 1165 (9<sup>th</sup> Cir. 2005), is incorrect, and that case is still pending before the Court of Appeals for the Ninth Circuit. It is, therefore, ORDERED that the petition be DENIED and DISMISSED, because petitioner's claims are barred by the statute of limitations. It is further ORDERED that judgment be entered in favor of the respondent.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

The Clerk shall mail a copy of this Final Order to all counsel of record.

/s/ Jerome B. Friedman  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

August 23, 2006